

**Before the  
Federal Communications Commission  
WASHINGTON, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Petition for Preemption of Article 52 of the</b>	)	<b>MB Docket No. 17-91</b>
<b>San Francisco Police Code Filed by the</b>	)	
<b>Multifamily Broadband Council</b>	)	
 <b>To: The Commission</b>		

**COMMENTS OF CAMDEN PROPERTY TRUST**

Camden Property Trust ("Camden" or the "Company"), by its attorneys, submits these Comments in response to the April 4, 2017, Public Notice seeking comment on the February 24, 2017, Petition for Preemption filed by the Multifamily Broadband Council ("Preemption Petition").<sup>1</sup> Camden respectfully requests that the Commission grant the Preemption Petition as the provisions authorizing competitive provider access to existing wiring in multi-family dwelling units ("MDUs") under Article 52 of the San Francisco Police Code ("Article 52") conflicts with Commission policies promoting facilities-based competition and the Commission's policies governing the provision of bulk services to MDUs.<sup>2</sup>

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<sup>1</sup> *Media Bureau Seeks Comment on Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multifamily Broadband Council*, MB Docket No. 17-91, Public Notice, DA 17-318 (MB April 4, 2017). *Petition for Preemption of Article 52 of the San Francisco Police Code Filed by the Multifamily Broadband Council*, MB Docket No. 17-91, Order, DA 17-356 (MB April 13, 2017) (extending due dates for filing Comments and Reply Comments).

<sup>2</sup> For purposes of brevity, Camden adopts the summary of Article 52 provided by Petitioner. *See Preemption Petition*, pp.2-5.

## COMMENTS

### **1. Bulk Billing Arrangements Deliver Substantial, Tangible Benefits to Residents in Camden's and Other Residential Communities Throughout the United States**

Camden is one of the largest publicly traded multifamily companies in the United States. As of April 30, 2017, Camden owns interests in and operates 152 multifamily communities containing 52,793 apartment homes across the United States. The Company has long recognized that residents and prospective residents value high-speed Internet access service as an essential service. To meet these expectations and requirements, Camden routinely enters into bulk service arrangements with incumbent local exchange carriers, franchised cable operators and private cable operators, assessing which provider offers the most compelling service packages for each of its respective residential communities. By purchasing video and high speed Internet access service in bulk, Camden obtains steeply discounted rates for video services, high-speed Internet services, and WiFi services. The elements of a bulk service package offered to residents at several Camden communities may be summarized as follows:

#### **High speed Internet access service:**

- Wired and wireless Internet service of 300 Mbps per residential unit
- Wireless Internet service in all indoor and outdoor amenity areas of the community

#### **Video programming services (linear):**

- Over 200 HD channels including many premium channels consistent with the services provider's offerings in the local community
- Two high-definition receivers, two set-top box remote controls, one cable modem, one wireless access point, with no deposit or equipment charges to the residents

#### **Optional Services:**

Residents have the option to purchase from the bulk services provider additional video channels, higher broadband data rates, and wireline voice services.

Camden is also planning a suite of next generation home automation services and security services, some of which will run over the same converged communications infrastructure as the bulk service packages currently offered to residents.<sup>3</sup>

Camden's residents obtain substantial benefits under our bulk service arrangements, saving \$30 to \$75 per month versus the average cost they would pay for the same services on an individual subscriber basis. The residents enjoy the convenience of having service immediately available upon move-in without having to schedule and take time out of their day for a service installation appointment and avoid the hassle of credit checks, deposit requirements, service initiation fees, and installation costs. With the inclusion of true high speed Internet access service in the bulk packages available at its communities, Camden's residents may participate fully in the social, educational and economic benefits available through access to high speed Internet access service.

The Preemption Petition explains at length the economic benefits that services providers realize through bulk service agreements and the detrimental impact of Article 52 and similar ordinances on funding new projects. The benefits to MDU owners are equally substantial and real. Foremost, the bulk services arrangements enable the property owner and services provider to define and negotiate responsibilities for the maintenance, repair, replacement and upgrade of the on-premise communications infrastructure, including the wiring; technology refresh obligations; and consumer-oriented service trouble reporting and response procedures.

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<sup>3</sup> As the *Preemption Petition* observes, wireline (fixed) video, Internet access and voice services are increasingly distributed throughout MDUs over a single cable due to technological convergence. *See Preemption Petition*, p. 20. This trend will accelerate as copper retirements and the transition to IP services moves forward. In agreements between MDU owners and triple play services providers the allocation of costs (for new builds and retrofits) and the installation and maintenance responsibilities are typically built on the definitions of home run wiring and cable home wiring set out in Sections 76.800(d) and 76.5 (II) of the Commission's rules. 47 C.F.R. §§ 76.800(d), 76.5(II).

The services provider's exclusive access to its designated wiring infrastructure at an MDU clarifies end-to-end responsibility and accountability.

These substantial benefits are not achievable under the contorted "open-access" regime contemplated under Article 52 and other local ordinances that may emerge over time in the event Article 52 is not pre-empted.<sup>4</sup> The regulatory environment contemplated by Article 52, including the procedures by which new services providers, looking to leverage investments made by property owners and/or existing services providers, are empowered to demand access to existing wiring and negotiate "just and reasonable" compensation, intrude upon and undermine the business negotiations that routinely occur among MDU owners and true facilities-based services providers.

In Camden's experience, in situations where more than one services provider is permitted to use the same wiring, none of the services providers accept full responsibility to maintain and repair that shared wiring. Services providers do not exercise the same level of care with shared wiring because the obligation to repair damage typically requires the parties to determine which services provider was responsible for the damage or the repairs, and repairs of the essential facilities are often delayed as finger pointing ensues. True facilities-based services providers outright refuse to replace or upgrade wiring in shared wiring environments, particularly, if other providers can access and use the wiring without participating in the capital investment.

Camden routinely installs extra conduit, microduct, and other pathways to enable entry by additional services providers. Additional services providers can enter the multifamily community by installing wiring within the pathways placed by Camden. However, Article 52

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<sup>4</sup> See generally, California Association of Competitive Telecommunications Companies, 2017 Regulatory and Legislative Initiatives, available at <http://www.caltel.org/initiatives.html> ("Monitoring/building on the success of a new ordinance in San Francisco to pursue sponsored statewide legislation to address building access issues that are impeding competition and the deployment of broadband").

empowers new services providers looking to avoid the normal and customary negotiations between services providers and MDU owners to take and use wiring investments made by owners such as Camden irrespective of the disruptions the taking will cause to residents who receive bulk services. New services providers can pursue their business plans and avoid such disruptions by making the modest investment of pulling their own wiring through available pathways.<sup>5</sup>

Under Article 52 and potentially similar local laws, forward-looking companies, such as Camden, who normally install additional facilities for later use will be better served by foregoing costly future-proofing. Based on the text of the ordinance, Article 52 encourages a free-for-all between providers over use of a single set of wires and blocks incentives for responsible, facilities-based investment in new wiring that providers will never make. That result runs counter to the Commission's goals favoring infrastructure investment for both services providers and property owners. Property owners have no interest in and should not be compelled to negotiate with services providers that disrupt established, mutually beneficial relationships built upon established Commission policies that enable bulk service arrangements or exclusive marketing arrangements and prohibit exclusive access arrangements.<sup>6</sup>

**Service Interruptions; Service Degradation.** It is reasonable to conclude that Article 52 will cause interruptions to bulk services. The only question is how broad and troubling the

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<sup>5</sup> Camden's practice is consistent with the Commission policy prohibiting exclusive access agreements between MDUs and cable operators. *See Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units & Other Real Estate Developments*, Report & Order & Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235 (2007).

<sup>6</sup> Camden's approach to accommodating multiple facilities-based services providers in MDUs is not the exclusive approach. Many MDU owners negotiate exclusive marketing arrangements (in lieu of bulk service arrangements) with services providers, but also negotiate access agreements with another services provider to offering video and broadband services to provide choices for residents. Other MDU owners have established the practice of granting multiple services providers to extend their services to the residential units at the property or community. A common theme of all these arrangements is that no services provider is granted exclusive access to the property, consistent with the Commission's prohibition against exclusive access arrangements. Equally important, each services provider has access to and responsibility for its designated inside wiring.

interruptions. If a new services provider connects to the home run wiring that carries the bulk services to a unit, that will cause a disruption in all of the bulk services that Camden has agreed would be available to its residents. If a new services provider attempts to share home run wiring, experience shows that the attempted sharing will result in a serious degradation of both services providers' service quality or a complete loss of one or more services provider's services. When interruptions inevitably arise, Camden typically must deploy resources to diagnose and repair the issue or the bulk provider will diagnose and repair the issue and will bill the repair amount to Camden or the impacted resident.

Multifamily communities, including those with bulk data services, often make available wireless Internet access service to residents using a mesh WiFi solution. These networks are carefully engineered, with wireless access points precisely located throughout a property. If a new services provider entrant commandeers wiring that serves a wireless access point, many other residents will experience poorer service quality and availability, since an entire node has been removed from the mesh network.

One reason bulk services providers assume elevated customer service terms and agree to technology refresh obligations is that bulk services providers control the one run of wiring that impacts the end-user's experience. Under an Article 52 regime, if bulk services providers must fight other services providers over shared use of that home run wiring, bulk services providers will not agree to elevated response and cure times for outages and minor service problems. Likewise, bulk services providers will limit their technology obsolescence provisions to apply to only those portions of the infrastructure exclusively controlled by the bulk services provider (e.g., their distribution plant). By allowing the taking of existing wiring, Article 52 allows one resident's "choice" to negatively impact service to many other residents.

**Adverse Impact on the Delivery of IoT Services.** Camden's ability to deliver future services, such as home automation and smart door locks, will be severely hampered if Camden cannot exercise control over the use of inside wiring. Article 52 allows a services provider to disconnect wiring that delivers signal to a smart door lock, learning thermostat, home automation hub, or other devices, creating enormous operational problems and legal liability for the property owner. Camden cannot safely and confidently invest in deploying such advanced technologies under such a regulatory scheme.

**Adverse Price Impact.** The low pricing realized through bulk services arrangements depends, in part, on fewer service calls to a property. Because the services are always connected to all units, the services provider does not need to roll a truck every time a resident moves into or out of a unit. However, under Article 52, the bulk services provider will need to roll trucks more often, reconnect lines that have been taken by new services provider entrants, and groom managed data networks impacted by wiring disconnects, among other unnecessary challenges. In a shared wiring environment, the multifamily bulk service community will almost inevitably generate more trouble tickets, meaning more administrative cost to the bulk services provider. The expense of the additional workers, truck rolls, and customer service would be passed on to property owners and residents in higher rates. The economic benefits of bulk service arrangements will be significantly eroded, and the related benefits of bulk service arrangements—readily available services on move-in; no need to schedule customer-specific service activation; no credit checks or damage deposits for residents—will be eliminated.

## **2. Article 52 Implicates the Commission’s Bulk Services Policy and Should be Preempted**

Consistent with the *Bulk Services Order*<sup>7</sup>, facilities-based services providers and MDU owners such as Camden have agreed to arrangements and shared investments that deliver high quality video and true high speed Internet access service to MDU communities across the country. Residents in MDUs obtain access to reliable high speed Internet access at super competitive rates and MDU owners have established relationships with services providers that maximize service quality and reliability of these services for the benefits of residents. In Camden’s experience, the Commission’s conclusion in the *Bulk Services Order* has been confirmed time and again: “In the large majority of cases, bulk billing appears to lower prices, increase the volume and variety of programming, encourage high quality and innovation, and bring video, voice and data services to residents.”<sup>8</sup>

From the perspectives of both services providers and owners of MDUs such as Camden, the benefits of bulk service arrangements are inextricably linked to a single services provider having exclusive access to the wiring and related infrastructure installed at an MDU for the delivery of its services to the residents. Services providers are in the best possible position to deliver high quality video and high speed Internet access service in a reliable manner. Responsibility for service problems is clearly delineated. Costs are minimized for services providers and owners and residents obtain quality services at extremely competitive rates.

In a fundamental sense, Article 52 “breaks the bundle,” undermines the benefits of bulk service arrangements, and implicates the Commission’s policy determinations in its *Bulk Services Order*. As Petitioners note, in adopting its policy of allowing bulk services arrangements, the

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<sup>7</sup> See *Exclusive Service Contracts for Provision on Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Second Report and Order, 25 FCC Rcd 2460 (2010) (“*Bulk Services Order*”).

<sup>8</sup> *Id.* at 2463, ¶ 9.



Commission evaluated the option of individual resident choice over the acknowledged benefits of bulk service arrangements to a given MDU community, concluding that “it would be a disservice to the public interest, if in order to benefit a few residents, we prohibited bulk billing, because so doing would result in higher . . . service charges for the vast majority of residents who are content with such arrangements.”<sup>9</sup> Article 52 runs roughshod over this policy determination.

Article 52 undermines the Commission’s *Bulk Services Policy* by granting competitors a right of access to and use of the existing wiring intended for and dedicated to the bulk provider’s services. The San Francisco ordinance supports and encourages services providers that did not participate in the development of the bulk services arrangement with its allocation of costs, responsibilities, and benefits to solicit business from individual residents and provide service in a manner that negates the benefits of bulk services to the MDU community, the owner and the services provider. The service quality and trouble resolution issues identified above are a virtual certainty. The economic benefits of the bulk service arrangement for services providers, residents and MDU owners will be eroded under local laws such as Article 52.

The Commission’s related policy that prohibits exclusive access arrangements for multi-channel video programming distributors better accommodates competitive entry than Article 52. It does not undermine the benefits and integrity of existing bulk service arrangements. As noted above, Camden among other MDU owners, enables and supports this policy through the installation of spare microducts and conduit.

## CONCLUSIONS

The *Bulk Services Order* has enabled the delivery of high speed Internet access service and video services at compelling prices to residents in Camden residential communities.

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<sup>9</sup> *Id.* at 2471, ¶ 8.

The same is true at other MDU communities throughout the United States. Article 52 fundamentally undermines the benefits of bulk service arrangements by allowing multiple services providers to access the existing wiring dedicated to the exclusive use of bulk services providers. For the reasons discussed herein, the Commission should grant the Preemption Petition and take other action consistent with the views expressed herein.

Respectfully submitted,

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